



POLICE DEPARTMENT

April 1, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Angel Romero
Tax Registry No. 916595
43 Precinct
Disciplinary Case No. 82003/06

Police Officer Harrison Kwan
Tax Registry No. 930513
43 Precinct
Disciplinary Case No. 82005/06

The above-named members of the Department appeared before me on January 10, 2008, charged with the following:

Disciplinary Case No. 82003/06

1. Said Police Officer Angel Romero, on or about September 15, 2005, while on duty, while assigned to the 43 Precinct, did fail and neglect to render police services in said Officer's assigned area, to wit: refused to accept and properly voucher prescription medication that was turned over to him by an individual known to the Department and reported as abandoned property.

P.G. 202-21, Page 1, Paragraph 8 - POLICE OFFICER/DUTIES
AND RESPONSIBILITIES

2. Said Police Officer Angel Romero, while assigned to the 43 Precinct, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: between January 1, 2005 and December 31, 2005, said Officer did wrongfully and without just cause engage in off duty employment without permission or authority to do so.

P.G. 205-40, Page 1, Paragraphs 1-2 - OFF DUTY EMPLOYMENT

Disciplinary Case No. 82005/06

1. Said Police Officer Harrison Kwan, on or about September 15, 2005, while on duty, while assigned to the 43 Precinct, did fail and neglect to render police services in said Officer's assigned area, to wit: refused to accept and properly voucher prescription medication that was turned over to him by an individual known to the Department and reported as abandoned property.

P.G. 202-21, Page 1, Paragraph 8 - POLICE OFFICER/DUTIES
AND RESPONSIBILITIES

The Department was represented by Michelle Blackman, Esq., Department Advocate's Office, and the Respondents were represented by John Tynan, Esq.

The Respondents, through their counsel, entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondents, having pleaded Guilty, are found Guilty as charged.

EVIDENCE IN MITIGATION

Introduction

On September 15, 2005, the Respondents were subjected to an integrity test conducted by Internal Affairs Bureau (IAB) Group 22. This integrity test involved an IAB undercover officer posing as a security guard for a Laundromat located at Watson and Bronx River Avenue, the Bronx. The undercover officer was provided with a black duffle bag. Inside the duffle bag was a small bottle which had a label indicating that the

bottle contained prescription medication. The undercover officer was directed that when the Respondents arrived at the Laundromat, he was to identify himself as the security guard, offer them the duffle bag, and tell them that there was medication inside the bag and that the bag had been abandoned inside the Laundromat.

Respondent Kwan

Respondent Kwan testified that on September 15, 2005, he was on duty, in uniform, assigned to sector patrol duties within the 43 Precinct, serving as the recorder in a Radio Motor Patrol car (RMP) operated by Respondent Romero. Shortly after midnight, they responded to a radio call regarding a dispute at a Laundromat located at Watson and Bronx River Avenue, the Bronx. When they arrived there, a man came out of the Laundromat and stated that he was the security guard for the Laundromat. He reported to them that a male and a female had engaged in a fight inside the Laundromat but that they had left. He showed them a duffle bag he was holding and told them that either the male or the female had "left this bag behind." When they asked what was inside the bag, the man responded, "Viagra." Respondent Kwan testified that neither he nor Respondent Romero looked inside the bag. They readily accepted the security guard's representation about the bag's contents because he had been responsible enough to report the loss of the bag to them.

Respondent Kwan recalled that he told the man to keep the bag inside the Laundromat for an hour in case the male and/or the female returned to retrieve it. Respondent Kwan testified that he and Respondent Romero decided not to immediately take possession of the bag because they wanted to give the owner a chance to retrieve it.

When Respondent Kwan was asked if he was familiar with Patrol Guide 218-26 governing the processing of found property, he responded that on September 15, 2005, he was "somewhat" familiar with the provisions of that Patrol Guide section. Respondent Kwan testified that when this charge was served on him, he was reinstructed regarding the requirements of Patrol Guide 218-26. He noted that the section delineating the processing of found property does not contain the word "immediately." He testified that if he and Respondent Romero had immediately taken possession of the bag and had immediately vouchered it, it would have been "virtually impossible" for the owner to retrieve the bag.

Respondent Romero

Respondent Romero, who was employed as a New York City Correction Officer before he entered this Department in 1995, testified that he has made over 100 arrests and that he was named "Police Officer of the Month" in June, 1998.

Respondent Romero testified in a manner consistent with Respondent Kwan's testimony regarding their duties on September 15, 2005, and their response to the Laundromat. Respondent Romero recalled that when the security guard offered them the duffle bag which he stated had been left in the Laundromat, the security guard indicated that the bag contained "medication." He told the security guard to "hold off" for an hour "in case they come back" to get the medication the security guard had told them was inside the bag. Respondent Romero further recalled that he told the security guard that he and Respondent Kwan would return to the Laundromat later that night to pick up the bag

if it had not been retrieved by the owner. Respondent Romero could not recall whether or not he and Respondent Kwan drove by the Laundromat later during their tour of duty.

With regard to engaging in unauthorized off duty employment between January 1, 2005 and December 31, 2005, Respondent Romero testified that after he and his wife, who have two children, purchased a house in [REDACTED] New York, they had difficulty paying their bills, even though his wife was employed also. To earn extra income, he obtained employment with Eastern Security Corporation (Eastern) as an unarmed security guard. Eastern assigned him to work at a Circuit City store in Yonkers. He worked there 13 or 14 hours per week for 50 weeks and was paid \$15.00 per hour. He testified that he was not aware at the time he applied for employment with Eastern that he was required to submit an off-duty employment approval application and that he "found out six months later that I was supposed to put that in."

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

Respondent Kwan was appointed to the Department on July 1, 2002. Respondent Romero was appointed to the Department on June 30, 1995. Information from their personnel records that was considered in making these penalty recommendations is contained in attached confidential memoranda.

Both Respondents have pleaded guilty to having failed to render police services within their assigned area by refusing to accept and properly voucher a bag containing prescription medication that was turned over to them by a man they believed was a

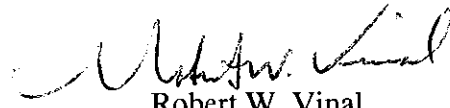
security guard who reported to them that the bag had been abandoned. In Disciplinary Case Nos. 81508/06 and 81511/06 (approved on December 4, 2006), two probationary members each forfeited 13 vacation days after they pleaded guilty to failing an integrity test by neglecting to accept and voucher a handbag they were told had been abandoned. However, in Disciplinary Case No. 81233/05 (approved on May 1, 2006), a 15-year member who had no prior disciplinary record was required to forfeit eight vacation days after he acknowledged that he had failed to voucher the necklace of a prisoner he had transported.

Respondent Romero has also pleaded guilty to having engaged in off duty employment as a security guard without permission or authority to do so. The Assistant Department Advocate cited Disciplinary Case No. 81214/05 (approved on February 23, 2006) in which a 16-year member who had no prior disciplinary record forfeited 20 vacation days after he acknowledged that he had engaged in unauthorized off duty employment with two different companies. However, in that case, unlike here, the member also misused Department resources by having an on duty officer provide an escort for one of the member's unauthorized jobs. In a more recent decision, Disciplinary Case No. 82434/06 (approved on November 27, 2007), a 12-year member who had no prior disciplinary record was required to forfeit ten vacation days after he acknowledged that he had engaged in off duty employment as a security guard, in excess of 20 hours per week, without permission.

Based on the penalties imposed in the cited cases and in consideration of the fact that neither of the Respondents has a prior formal disciplinary record, it is recommended

that Respondent Kwan be required to forfeit ten vacation days and it is recommended that Respondent Romero be required to forfeit 20 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

